

***Sex Offender Commitment Act of LB1199 (2006)***  
***Frequently asked Questions***  
***September 21, 2006***

*The following questions and answers are intended strictly as a learning aid and are not intended as legal advice. Please consult with your attorney for legal advice. All references to “LB 1199” refer to LB 1199 of 2006 which contains a number of new statutes regarding sex offenders, including the new **Sex Offender Commitment Act** or “SOCA”.*

1. What is the “gap” period for SOCA and why does it exist?

**Answer:** The “gap” period is the six months from July 14, 2006 through January 14, 2007. SOCA created evaluation and notice requirements that were to start six months prior to the release date from prison of some sexual offenders. These requirements became law on July 14, 2006, the effective date of LB 1199, and it is not possible to go back in time, to perform the evaluations and provide notice for sex offenders starting in January of 2006. To address the issues of the “gap” period, Department of Correctional Services (DCS) and the Health and Human Services System (HHSS) are working closely to coordinate our efforts. It is our intent to provide County Attorneys and the Attorney General’s office with as much advance notice and information as possible regarding sex offenders scheduled to be released prior to January 14, 2007.

2. What are the timelines under SOCA for notification to County Attorneys and the Attorney General regarding sex offenders who are close to completing their prison sentences?

**Answer:** Nebraska Revised Statute (NRS) § 83-174.02 (2) (Sec. 88 (2) of LB 1199) requires DCS to have a mental health professional evaluate certain sex offenders by “at least 180 days prior to their release date.” It goes on to say that the evaluation shall be completed and sent to the appropriate County Attorney or County Attorneys and the Attorney General “at least 150 days prior to the release date.” This time is intended to give the County Attorney time to prosecute the SOCA civil commitment prior to the sex offender’s release date or, if the County Attorney declines to prosecute the civil commitment, to give the Attorney General time to do so.

Under NRS § 83-174 (3) (Sec. 86 (3) of LB 1199) a county attorney is required to give the Attorney General notice that he or she will not be proceeding with a civil commitment under SOCA no later than 45 days prior to the pending release of a sex offender as defined by SOCA.

3. Who is responsible for conducting evaluations of sex offenders?

**Answer:** DCS is responsible for completing an evaluation under NRS § 83-174.02 (Sec. 88 of LB1199).

4. Who is responsible for the costs of the evaluation?

**Answer:** DCS is responsible for the cost of the evaluation it conducts, see NRS § 83-174.02 (Sec. 88 of LB1199). The legislature appropriated funds to DCS for this responsibility. However, if a second independent evaluation is sought by the subject pursuant to NRS § 71-948 (Sec. 44 of LB 1199) and the subject cannot afford it; the county is responsible for the costs of the second independent evaluation. Usually this cost will fall on the county prosecuting the civil commitment, however, NRS § 71-1205 (2) (Sec. 61 (2) of LB 1199) states that “all costs relating to such proceedings shall be paid by the county of residence of the subject.” It is the responsibility of the mental health board to establish the county of residence.

5. Who decides whether to hold the subject in emergency protective custody (EPC) at the Diagnostic & Evaluation Center operated by Department of Correctional Services or in a county jail?

**Answer:** The legislature envisioned that a dangerous sex offender would be committed by a mental health board prior to their release from prison, so that the county would incur very limited costs associated with the civil commitment process. If the civil commitment process is not completed until after the subject’s release from prison, the subject may be placed in emergency protective custody (EPC) and held, pending completion of the commitment process and admission to treatment. The decision of where the subject is to be held is made by the county and law enforcement officials. See NRS § 71-919 (Sec. 38 of LB 1199); NRS § 71-1205 (Sec. 61 of LB 1199) and NRS § 71-1206 (2) (Sec. 62 (2) of LB 1199). After the commitment hearing has been held, the mental health board decides whether the subject shall be held in emergency protective custody and where. See NRS § 71-1210 (1) (Sec. 66 (1) of LB 1199).

6. Who pays for the costs of the emergency protective custody (EPC) if the subject has been released from prison?

**Answer:** The county is responsible for the costs of the civil commitment process, including the cost of the EPC at all stages of the commitment process. As noted above in the answer to question 4, the county of residence of the sex offender is responsible. See NRS § 71-919 (Sec. 38 of LB 1199); NRS § 71-1205 (Sec. 61 of LB 1199); NRS § 71-1206 (2) (Sec. 62 (2) of LB 1199) and NRS § 71-1210 (1) (Sec. 66 (1) of LB 1199).

7. Are there limits to when a subject may be held in county jail or Department of Correctional Services facility?

**Answer:** Yes, the subject can only be held in a jail or DCS facility if they have a prior conviction for a sexual offense found in NRS § 29-4003 and do not have a medical or psychiatric emergency. If either of these conditions are not met, they need

to be admitted to an appropriate and available medical facility (crisis center). See NRS § 71-919 (Sec. 38 of LB 1199); NRS § 71-1205 (Sec. 61 of LB 1199); NRS § 71-1206 (2) (Sec. 62 (2) of LB 1199) and NRS § 71-1210 (1) (Sec. 66 (1) of LB 1199).

- 8.** Who is responsible for transporting a subject to emergency protective custody (EPC) or mental health board hearings?

**Answer:** The county prosecuting the civil commitment is responsible for the costs of transportation to either the mental health board proceedings or to EPC. Usually this duty falls on the county sheriff but the county may make arrangements with other individuals to handle these duties. See NRS § 71- 929 and NRS § 919 (Sec. 38 of LB 1199).

- 9.** Who is responsible for transporting subjects to the treatment facility if they are found to be a dangerous sex offender and committed to treatment?

**Answer:** The sheriff of the county prosecuting the civil commitment is responsible for transporting the subject to the treatment facility after commitment. See NRS § 71-1212 (Sec. 68 of LB 1199).

- 10.** If a subject is found to be a dangerous sex offender under the Sex Offender Commitment Act, must they be committed to inpatient treatment with HHS?

**Answer:** No, NRS § 71-1206 (6) (Sec. 65 (6) of LB 1199) states that the mental health board shall impose the “least possible restraint upon the liberty of the subject.” That section goes on to say that “Inpatient hospitalization or custody shall only be considered as a treatment alternative of last resort.”

- 11.** What are the requirements and timeline for notification when a Sex Offender has completed treatment at a regional center and is ready for outpatient care or release?

**Answer:** NRS § 83-174.03 (Sec. 89 of LB1199) states that when an individual is to be released from custody by an agency such as HHS, and is to be supervised in the community, the agency, such as HHS, must give the Office of Parole Administration notice “at least sixty (60) days prior to release.” This is to facilitate the transition to lifetime supervision.

Under NRS § 83-174 (1) (Sec. 86 (1) of LB 1199), an agency with jurisdiction over a sex offender as defined in NRS S 29-4003 must give ninety (90) days notice, prior to the release from incarceration or commitment, to the Attorney General, the Nebraska State Patrol, the prosecuting county attorney and the county attorney in the county in which the individual is incarcerated, supervised or committed.

Under NRS § 71-1220 (Sec. 76 of LB 1199) the administrator of a regional center must provide notice to the committing mental health board when a patient is ready for

release from inpatient treatment. Under NRS § 71-1221 (Sec. 77 of LB 1199) the notice is to be forwarded to the County Attorney of record and the mental health board “shall” conduct a hearing if requested by the County Attorney or “may” do so on its own motion to determine if the subject is a proper subject for release. The hearing must be held within 14 days of the notice from the regional center per NRS § 71-1219 (1) (Sec. 75 (1) of LB 1199).

**12.** Are the hearings before the mental health boards under SOCA open to the public?

**Answer:** No, NRS § 71-1225 (Sec. 81 of LB 1199) indicates that all hearings are to be closed to the public except at the request of the subject.

**13.** Are victims of sexual assaults entitled to notice if a subject escapes from treatment or is discharged?

**Answer:** Yes, NRS § 81-1850 (4) (Sec. 85 of LB 1199) requires DCS to forward the names of victims appearing in the file to HHSS so that they can be notified if a subject escapes or has a change in disposition from inpatient treatment.

**14.** What is the definition of a “dangerous sex offender”?

**Answer:** The term dangerous sex offender is defined in NRS § 83-174.01 (1) (Sec. 87 (1) of LB 1199). To meet this definition they must be either:

- (1) A person who suffers from a mental illness (generally an Axis I diagnosis) which makes them likely to engage in repeat acts of sexual violence (such as pedophilia), who has been convicted of one or more sexual offenses, and who is substantially unable to control his or her criminal behavior, *or*
- (2) A person with a personality disorder (an Axis II diagnosis) which makes the person likely to engage in repeat acts of sexual violence, who has been convicted of two or more sex offenses, and who is substantially unable to control his or her criminal behavior.

**15.** What is meant by a “sex offense”?

**Answer:** The term “sex offense” is defined in NRS § 83-174.01 (5) (Sec. 87 (5) of LB 1199) as any offense as listed in NRS § 29-4003 which is amended by LB 1199 Sec. 18 to include:

- Kidnapping of a minor pursuant to section 28-313, ...
- False imprisonment of a minor pursuant to section 28-314 or 28-315,
- Sexual assault pursuant to section 28-319 or 28-320,
- Sexual assault of a child in the second or third degree pursuant to 28-320.01,
- Sexual assault of a child in the first degree pursuant to Sec. 6 of LB 1199,
- Sexual assault of a vulnerable adult pursuant to 28-386 (1) (c),
- Incest of a minor pursuant to section 28-703,
- Pandering of a minor pursuant to section 28-802,

- Visual depiction of sexually explicit conduct of a child pursuant to section 28-1463.03 or 28-1463.05,
- Knowingly possessing any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers pursuant to section 28-813.01,
- Criminal child enticement pursuant to section 28-311,
- Child enticement by means of a computer pursuant to section 28-320.02,
- Debauching a minor pursuant to section 28-805, or
- Attempting, solicitation, or conspiracy to commit an offense listed above.